

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TIMOTHY HARLOW, individually
and As Representative of his minor
children, MARILYN HARLOW and
PRISCILLA HARLOW,
PLAINTIFFS

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CIVIL ACTION NO. 2-05CV-207

VS.

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DAIMLERCHRYSLER CORPORATION,

§

DEFENDANT

§

**ORIGINAL NOTICE OF RESIGNATION BY TRUSTEE AND
PETITION FOR APPROVAL OF TRUSTEE'S RESIGNATION,
AND DISCHARGE OF TRUSTEE**

Encore Trust, a division of Encore Bank, N.A., of Houston, Harris
County, Texas (hereinafter "Trustee") files its original Petition for Trustee's Resignation and
Discharge of Trustee and would respectfully show the Court as follows:

1.

The Beneficiary

Marilyn Harlow (the "Beneficiary") is an incapacitated person within the meaning of
Section 142.007 of the Texas Property Code. She was born on October 1, 1993 and is
currently 14 years old. The beneficiary is disabled and requires substantial assistance in
her activities of daily living.

2.

Background

The Marilyn Harlow Section 142 Trust (the "Trust") was created by Order pursuant to a Final Judgment entered by the court in the above referenced and numbered cause on October 11, 2006. Attached to this motion as Exhibit A and incorporated by reference is a true and correct copy of the Final Judgment. The Trust was created to receive the proceeds due to Marilyn Harlow as a result of the Final Judgment in the case. On October 11, 2006, the court also signed the Order establishing the Trust and Appointing Encore Trust, a division of Encore Bank, N.A. of Houston, Texas as the Trustee. Attached to this motion as Exhibit B and incorporated by reference is a true and correct copy of the Order of Court Establishing the Marilyn Harlow Special Needs Trust.

The Trustee, Encore Trust, wishes to resign as Trustee of the Trust and has signed a resignation contingent upon this Court's approval of the Trustee's resignation. The Unconditional Resignation is attached as Exhibit C and incorporated by reference. The Trust Agreement, attached as Exhibit D and incorporated by reference, provides that the Trustee may not resign without prior authority from the Court to do so. Trustee requests that the court appoint a successor trustee of its choosing to replace Encore Trust Company.

Beneficiary's natural guardian, Mr. Timothy Harlow, has been uncooperative in establishing a stable and positive environment for Marilyn Harlow, the Beneficiary. The Trustee has been unsuccessful in establishing a positive working relationship with Mr. Harlow and the resulting discord and animosity toward Trustee by Mr. Harlow has resulted in a situation which makes it unreasonable for Trustee to continue to serve in such a

capacity. Mr. Harlow has publicly disparaged the Trustee, Mr. Harlow's own counsel, this Court and others who have exhausted all efforts to promote a positive environment for the Beneficiary. Mr. Harlow has refused all attempts to reasonably communicate with Trustee, and at times his own lawyers. He has resorted to threats of intimidation, as well as libel and slander in an effort to force Petitioner into distributions contrary to Beneficiary's best interests. Mr. Harlow has refused to successfully seek out a successor Trustee or work with his lawyers in an effort seek out a potential successor trustee in order to promote a positive and stable environment for Beneficiary. The resulting discord and distrust by Mr. Harlow toward Trustee makes a continuing relationship futile.

3.

Parties

The parties to this action are Petitioner, Encore Trust, a division of Encore Bank, N.A. and Timothy Harlow, the father of the beneficiary and the next friend representative of the minor trust beneficiary in the underlying claim. Simultaneously with the filing of this petition, he is being served with notice of this pleading and resignation at the Studio 6 Motel, 1255 North Highway 6, Houston, Harris County, Texas 77084. His counsel of record has also been provided with notice of this pleading and resignation as well.

4.

Jurisdiction and Venue

The Court has jurisdiction over this proceeding as this court created the Trust under the terms and conditions of the Trust documents and retains jurisdiction pursuant to the

Trust Agreement and prior orders of this Court. Venue is proper as the case was originally filed in this court and the underlying Trust was created by this Court as indicated by the attached exhibits.

5.

Trust Estate

As of May 22, 2008, the Trust estate consists of \$1,173,840.65. See Exhibit E, Trustee's Statement of Account for the period ending May 22, 2008. A confidentiality agreement was a material element of the original settlement.

6.

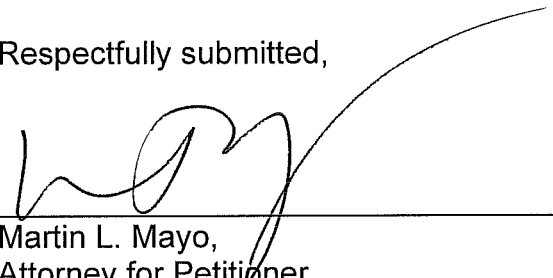
Accounting and Discharge

The Trustee has provided account statements to Timothy Harlow, father of the Beneficiary, on a regular basis. The Petitioner believes these statements constitute a satisfactory accounting of the Trust estate and a list of assets to be transferred pursuant to the Court's order granting Petitioner's relief. The Petitioner requests that Trustee's accounting be approved and the Court enter a judgment discharging the Trustee from all liabilities, duties, and all responsibilities as Trustee, and relieving any Successor Trustee of any obligation to seek further accountings or inquiry into the prior actions of the Trustee.

WHEREFORE, PREMISES CONSIDERED, the Petitioner respectfully requests that the Court (i) approve the Trustee's accounting; (ii) accept the Trustee's resignation as Trustee of the Marilyn Harlow Section 142 Special Needs Trust; (iii) appoint a successor trustee to replace Encore Trust, a division of Encore Bank, N.A. or further direct transfer of said trust assets; (iv) discharge the Trustee from any and all liabilities, duties, and all

responsibilities in connection with the Trust; (v) relieve any Successor Trustee from any responsibility and duty to pursue any actions against the Trustee; and (vi) grant the Petitioner such other relief as the Court deems appropriate.

Respectfully submitted,



Martin L. Mayo,
Attorney for Petitioner

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Texas Bar Number 13297875
Federal Bar ID 6369

CERTIFICATE OF SERVICE

Pursuant to Fed. R. CIV. P. 5, I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record on this 23 day of May, 2008 as follows:

John E. Osborne
Goldberg & Osborne
33 North Stone Ave., Suite 900
Tucson, AZ 85701

Via U.S. CM,RRR

Thomas A. Redwine
Redwine & Mabray
116 S. Crockett Street
Sherman, TX 75090-5906

Via U.S. CM,RRR

Michael C. Smith
Siebman, Reynolds, Burg, Phillips & Smith
713 So. Washington Avenue
Marshall, TX 75670

Via U.S. CM,RRR

Timothy W. Harlow
Studio 6 Motel, Room 206
1255 North Highway 6
Houston, TX 77084

Via U.S. CM,RRR and regular mail